S.B. CIVIL MISC. APPEAL NO. 1449/2006
(Girja Kanwar & ors. Vs. The Oriental Insurance Co. Ltd. & others)

DATED :04.10.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Farjand Ali for the appellants.

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By way of this appeal the claimant-appellants seek to challenge the award dated 09.03.2006 made by the Motor Accident Claims Tribunal, Chittorgarh in Claim Case No. 641/2003; and seek enhancement over the amount of Rs.4,70,000/- awarded by the Tribunal as compensation on account of accidental death of Ummed Singh (26 years), husband of appellant No.1, father of appellants Nos.2 & 3 and son of respondent Nos. 4 & 5.

On 16.09.2003, the deceased Ummed Singh while riding his bicycle was crushed by a bus bearing Registration No. RJ06 P 1809 and died because of the injuries sustained in the accident. The present appellants claimed compensation on account of death of Ummed Singh stating his age at 26 years, being engaged in agriculture and managing a road-side hotel and earning Rs.10,000/- per month. The parents of the deceased were also got joined in the claim application as necessary parties.

The Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid bus and rejected the contention of the non-applicants that accident occurred for the negligence of the deceased. While taking up quantification of compensation, the Tribunal found that there was no loss of agriculture income because there was no agricultural land available in the name of the deceased and further because it was stated by the father of the deceased that the agricultural land was got cultivated on share basis. In relation to the income by hotel business, the Tribunal found that no proper evidence was adduced in relation to such income of the deceased and in the overall circumstances took his income at Rs.3,000/- per month and contribution at Rs. 2,000/- per month. Looking to the age of the deceased between 26 to 30 years the Tribunal applied a multiplier of 17 to the multiplicand of Rs. 24,000/- per annum and thereby calculated pecuniary loss at Rs.4,08,000/-. The Tribunal has proceeded to award Rs. 60,000/- towards non-pecuniary loss by allowing Rs. 10,000/- to the wife of the deceased towards loss of consortium; and then Rs. 10,000/- to each of the three claimants and the non-applicants Nos. 4 & 5 towards loss of love, affection, guidance and services. The Tribunal has also awarded Rs.2,000/- towards funeral expenses and has, therefore, made an award in the sum of Rs. 4,70,000/- in

favour of the claimants and allowed them interest @ 6% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants has contended that looking to the age and income of the deceased and his future prospects, the amount awarded by the Tribunal remains too low and deserves suitable enhancement.

Having examined the considerations adopted by the Tribunal and the award in its totality this Court is constrained to observe that the award made by the Tribunal remains rather on higher side and prayer for enhancement as made in this appeal, apart from being totally baseless, does not appear even justified. This appeal remains bereft of substance and deserves to be dismissed.

The deceased was 26 years of age and when no definite proof of income of the deceased has been produced and the deceased has not been shown in any settled job or employment the Tribunal was to take a reasonable figure towards loss of contribution for the claimants. The Tribunal has put the estimate on the income of the deceased at Rs.3,000/-per month and thereby the loss of contribution at Rs. 2,000/- per month leading to a multiplicand of Rs. 24,000/- per annum that is definitely on higher side. Then, the choice of multiplier of 17 is also on higher side. The award appears immoderate when the Tribunal has proceeded to allow highly

excessive non-pecuniary loss at Rs. 60,000/- by allowing Rs. 20,000/- to the wife of the deceased in the different heads of loss of consortium and then of loss of love and affection; and by allowing Rs. 10,000/- to each of the children and parents.

Having regard to overall facts and circumstances of the case, this Court is of the opinion that the impugned award is on higher side and in any case cannot be said to be low or inadequate so as to warrant any interference in appeal.

In this view of the matter, there appears no reasonable ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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